Filed 12/11/03 In re Princess C. CA2/7

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re PRINCESS C., A person coming under the Juvenile Court Law.	B166495 (Los Angeles County Super. Ct. No. CK40241)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. PRINCESS C., Defendant and Appellant.	

APPEAL from a judgment of the Superior Court of Los Angeles County, Stephen Marpet and Valerie Skeba, Juvenile Court Referees. Affirmed.

Konrad S. Lee, under appointment by the Court of Appeal, for Defendant and Appellant.

Lloyd W. Pellman, County Counsel, and Sterling Honea, Principal Deputy County Counsel, for Plaintiff and Respondent.

Defendant and appellant Princess C. (mother) is the natural mother of minor Princess C.,[1] a dependent of the juvenile court. In October 2000, we denied a petition for extraordinary writ of the juvenile court's order setting a hearing for the selection and implementation of a permanent plan for Princess, with the possibility of termination of the parental relationship. Mother now appeals from the juvenile court's order terminating her parental rights concerning Princess. (Welf. & Inst. Code, § 366.26.)[2] Mother's sole contention on appeal is that the exception to termination of parental rights set forth in section 366.26, subdivision (c)(1)(A), precluded termination of her parental rights. We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

When Princess was aged two in 1998, the Department of Children and Family Services (Department) filed a petition seeking to declare her a dependent of the juvenile court (§ 300). The dependency petition, which alleged mother had repeatedly inflicted serious physical abuse on Princess, was sustained by the court. Princess was ordered into suitable placement, and mother was ordered to participate in parenting, anger management, and individual counseling.

Mother initially made good progress in the family reunification program arranged for her by the Department. The Department's report for the six-month review hearing (§ 366.21, subd. (e)) indicated she had completed a parenting course, participated in counseling, and engaged in positive visits with Princess. The court gave the Department discretion to release Princess to mother for a 60-day home visit.

However, Princess returned to her foster placement after an overnight visit with mother and told the foster mother that mother had "whipped" her. Princess's doctor

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[1] Mother and her child have the same name. For clarity, we will refer to the mother as "mother" and the child as Princess.

[2] All further statutory citations are to the Welfare and Institutions Code, unless otherwise indicated.

reported Princess had several bruises which he considered were not inflicted accidentally, and the social worker advised that mother had admitted striking Princess with a brush. In view of the renewed physical abuse, the court ordered all further visitation to be monitored by the Department and conducted in a neutral setting. The court also sustained a supplemental petition filed by the Department pursuant to section 342, alleging the additional physical abuse.[3] Thereafter, the court ordered that Princess remain in her placement because there was a substantial danger to her health if returned to mother's custody, and continued reunification services.

The Department's report for the 12-month hearing (§ 366.21, subd. (f)) showed a marked decline in mother's progress toward reunification with Princess. Mother displayed little interaction with Princess during visits, showed poor attendance in attending child abuse counseling, and failed to resolve the issues which led to Princess's dependent status. At the 12-month hearing, the court made findings that the Department had provided reasonable reunification services to mother, but mother had only partially complied with her case plan. The court continued the case for a contested permanency planning hearing (§ 366.22).

At the permanency planning hearing, mother testified she had participated in counseling for "a couple of months off and on," and she had not visited Princess regularly, principally because it hurt her to see Princess in someone else's care. At the conclusion of the hearing, the court terminated reunification and set the matter for a hearing pursuant to section 366.26.

Subsequently, the court ordered long-term foster care as the permanent plan for Princess until an adoptive home could be located. Princess was later placed in the home of prospective adoptive parents with whom she felt safe and happy.

Mother then filed a section 388 petition seeking to have the court order additional reunification services, which was denied.

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[3] The renewed abuse also resulted in a sustained dependency petition as to Princess's younger sibling, Marcus.

At the contested section 366.26 hearing, mother testified that Princess had been out of her custody since 1998, she missed some of her visits with Princess because of money issues, and her twice-a-week telephone contact with Princess had not been a problem. Mother also testified that she was "not really" opposed to the prospective adoptive parents adopting Princess, because she knows the couple. She also stated that if Princess was not returned to mother's custody, "it would be okay." The court found by clear and convincing evidence that Princess was adoptable, it would be detrimental to return Princess to mother, and the exception under section 366.26, subdivision (c)(1)(A), did not apply. Accordingly, the court terminated mother's parental rights. This appeal followed.

DISCUSSION

Mother contends that the juvenile court erred in determining that her parental rights should be terminated, and that her situation did not fall within the exception found in section 366.26, subdivision (c)(1)(A) (subd. (c)(1)(A)). We disagree.

Under section 366.26, subdivision (c)(1), when, as here, the juvenile court finds by clear and convincing evidence that the minor is likely to be adopted, the juvenile court must terminate parental rights unless it finds that an enumerated exception applies. (*In re Tabatha G.* (1996) 45 Cal.App.4th 1159, 1164.) It is the parent's burden to show that these exceptional circumstances apply. (*Ibid*.)

Mother's principal contention is that she falls within the scope of subdivision (c)(1)(A), which bars termination of parental rights when "[t]he parents . . . have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." We recognize that there is a division of opinion regarding the standard of review applicable to a determination under subdivision (c)(1)(A). Whereas most courts have reviewed this determination for the existence of substantial evidence (e.g., *In re Zachary G.* (1999) 77 Cal.App.4th 799, 809; *In re Derek W.* (1999) 73 Cal.App.4th 823, 827; *In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1537; *In re*

Autumn H. (1994) 27 Cal.App.4th 567, 575), at least one court has concluded that it is properly reviewed for abuse of discretion. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351.)

It is unnecessary for us to resolve this division of opinion. In adopting the abuse of discretion standard, the court in *Jasmine D*. acknowledged that "[t]he practical differences between the two standards of review are not significant." (*In re Jasmine D., supra*, 78 Cal.App.4th at p. 1351.) "'[E]valuating the factual basis for an exercise of discretion is similar to analyzing the sufficiency of the evidence for the ruling . . . . Broad deference must be shown to the trial judge. The reviewing court should interfere only "'if [it] find[s] that under all the evidence, viewed most favorably in support of the trial court's action, no judge could reasonably have made the order that he did.' . . ."'" (*Ibid*. quoting *In re Robert L.* (1993) 21 Cal.App.4th 1057, 1067.)

Subdivision (c)(1)(A) establishes a two-prong test involving assessments of (1) the parent's contact and visitation, and (2) the benefit to the child of continuing the existing relationship. As the court explained in *In re Autumn H., supra*, 27 Cal.App.4th at page 575, the second prong concerns whether "the relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents." In making this determination, the juvenile court "balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer," or alternatively, the juvenile court assesses whether "severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed . . . ." (*Ibid*.)

As the court in *Autumn H.* explained, the second prong requires a significant relationship that rises above incidental affection and care. It stated: "Interaction between natural parent and child will always confer some incidental benefit to the child. The significant attachment from child to parent results from the adult's attention to the child's needs for physical care, nourishment, comfort, affection and stimulation. [Citation.] The relationship arises from day-to-day interaction, companionship and shared experiences.

[Citation.] The exception applies only where the court finds regular visits and contact have continued or developed a significant, positive, emotional attachment from child to parent." (*In re Autumn H., supra*, 27 Cal.App.4th at p. 575.)

Following *Autumn H.*, appellate courts have concluded that even frequent and loving contact between a child and a parent is not sufficient, by itself, to establish the significant parent-child relationship required under subdivision (c)(1)(A). (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419.) As the court explained in *In re Jasmine D.*, *supra*, 78 Cal.App.4th at page 1350, "a *parental* relationship is necessary for the exception to apply, not merely a friendly or familiar one" because "[i]t would make no sense to forgo adoption in order to preserve parental rights in the absence of a real parental relationship."

Nonetheless, the requisite relationship does not prescribe daily interaction. In *In re Casey D.* (1999) 70 Cal.App.4th 38, 51, the court clarified that the *Autumn H.* standard demands only "a relationship *characteristically* arising from day-to-day interaction, companionship and shared experiences." (Italics added.) Thus, "[d]ay-to-day contact is not necessarily required, although it is typical in a parent-child relationship. A strong and beneficial parent-child relationship might exist such that termination of parental rights would be detrimental to the child, particularly in the case of an older child, despite a lack of day-to-day contact and interaction." (*Ibid*.)

Thus, in assessing the existence of the requisite relationship, the juvenile court should balance the relevant considerations "on a case-by-case basis and take into account many variables, including the age of the child, the portion of the child's life spent in the parent's custody, the 'positive' or 'negative' effect of interaction between parent and child, and the child's particular needs. [Citation.]" (*In re Zachary G.*, *supra*, 77 Cal.App.4th at p. 811.)

Here, in applying the first prong under *Autumn H.*, the juvenile court recognized that while Princess "has fun with" and "enjoys seeing" mother, mother had not regularly visited Princess and did not have a regular parental relationship with her.

As to the second prong, even assuming that there had been adequate contact and mother had assumed a parental role, the juvenile court determined that any detriment from terminating the existing relationship would not outweigh the benefits of adoption. Because Princess, at age six, had already been in foster care since for two-thirds of her life, the court found it beneficial for Princess to have "a permanent home" "to give her stability." Likewise, the court concluded that it would be detrimental for Princess to be returned to mother's custody, who "has not . . . been able to get herself in a position to have Princess returned."

Moreover, the record supports the juvenile court's determinations that mother had not played the requisite parental role in Princess's life and that the minor's need for stability outweighed the benefits of an ongoing relationship with mother. In making these difficult decisions about termination of parental rights, the dependency court is "entitled to find the social worker credible and to give greater weight to her assessments and testimony." (*In re Casey D., supra,* 70 Cal.App.4th 38, 53.) Substantial evidence in the social worker's report supports the dependency court's finding. The social worker's report found that while Princess liked visiting with mother, she wanted to stay with and be adopted by the prospective adoptive parents. Prior to the contested section 366.36 hearing, the social worker's report noted that mother cancelled six of the nine scheduled visits with Princess.

Indeed, mother herself appears to be aware of the benefits of adoption for Princess. At the section 366.26 hearing, mother stated that she did not oppose Princess's adoption, because she knew and felt comfortable with the adoptive parents, was aware that the minor felt comfortable with them, and would feel "okay" if she lost custody over Princess. Finally, there is ample evidence that adoption offered Princess a stable, loving home.

The instant facts are in contrast to those under *In re Jerome D.* (2000) 84 Cal.App.4th 1200, the authority cited by mother in which a parent was found to have met her burden under subdivision (c)(1)(A). In *Jerome D.*, unlike here, the juvenile court

found that the mother had maintained regular visitation and contact, her relationship with the minor was parental, and there was no evidence of adoptability. (*Id*. at pp. 1206-1209.)

In sum, the juvenile court properly determined that subdivision (c)(1)(A) is inapplicable to mother.

DISPOSITION

The order is affirmed.

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ZELON, J.

We concur:

PERLUSS, P. J. JOHNSON, J.